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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 EDDIE HERNANDEZ,

10 Plaintiff,

11 v.

12 57 DEGREES NORTH, LLC, *et al.*,

13 Defendants.

Case No. C06-1098L

ORDER GRANTING
MOTION TO AMEND

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15 **I. INTRODUCTION**

16 This matter comes before the Court on a motion filed by defendant 57 Degrees
17 North, LLC (“57 Degrees”) to amend its answer to assert an additional affirmative
18 defense, entitlement to limitation of liability pursuant to 46 U.S.C. § 181 *et seq.* (Dkt.
19 #24). The statute allows a shipowner to limit its liability to the value of the owner’s
20 interest in the vessel involved in the incident. Plaintiff opposes the motion.

21 For the reasons set forth in this order, the Court grants the motion.

22 **II. DISCUSSION**

23 Plaintiff alleges claims for Jones Act negligence and unseaworthiness. He alleges
24 that he was injured while working aboard the F/V Ballyhoo on October 15, 2003.

1 Plaintiff asserts that an unsecured crab pot fell over due to a vessel roll and struck both of
2 his legs while he was working. Plaintiff filed his complaint on August 3, 2006. Trial is
3 set for December 3, 2007.

4 Leave to amend “shall be freely given when justice so requires.” Fed. R. Civ. P.
5 15(a). The Court considers four factors in deciding whether to grant leave to amend:
6 “bad faith, undue delay, prejudice to the opposing party, and the futility of amendment.”
7 Kaplan v. Rose, 49 F.3d 1363, 1370 (9th Cir. 1994). A proposed amendment is futile if it
8 could be defeated by a motion to dismiss or if plaintiff cannot prevail on the merits. See,
9 e.g., Smith v. Commanding Officer, 555 F.2d 234, 235 (9th Cir. 1977).

10 Plaintiff argues that 57 Degrees waived the affirmative defense because it failed to
11 raise it earlier. The Court finds that no waiver occurred because 57 Degrees has timely
12 moved to amend its answer. The deadline for amending pleadings is June 6, 2007, and
13 the discovery cutoff is August 5, 2007. Furthermore, although 57 Degrees previously
14 amended its answer to delete a counterclaim, a party can move to amend more than once.
15 The Court will not penalize a party for simplifying the proceedings by deleting a claim or
16 counterclaim.

17 Plaintiff also argues that 57 Degrees has caused delay by waiting to file this
18 motion until after plaintiff filed a motion for partial summary judgment. Defendants’
19 counsel, however, contacted plaintiff’s counsel to seek his agreement to the amendment
20 *before* plaintiff filed his motion. There is also no evidence that any delay was strategic or
21 in bad faith. Instead, defense counsel asserts that additional facts learned in December
22 2006 prompted the proposed amendment. Also, plaintiff’s pending motion will not
23 dispose of the entire case, so this amendment will not delay resolution. Plaintiff further
24 asserts that he will be prejudiced and resolution will be delayed because he has already
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1 inspected the vessel, and it has since been sold. 57 Degrees asserts, and plaintiff has not
2 disputed, that the vessel is still in the area and plaintiff is welcome to inspect it again.
3 Although plaintiff may incur some additional expense, he will not be prejudiced or
4 delayed, as discovery is ongoing.

5 Plaintiff argues that he will incur prejudice because 57 Degrees discouraged him
6 from taking the deposition of the first mate by stating that it would not contest liability.
7 The deposition can be rescheduled, so plaintiff has not been prejudiced. Finally, plaintiff
8 argues that the amendment would be futile, but it does not appear futile based on the
9 current record.

10 **III. CONCLUSION**

11 For the foregoing reasons, the Court GRANTS 57 Degrees' motion (Dkt. #24).
12 57 Degrees may file an amended answer in the docket within ten days of the date of this
13 order.

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15 DATED this 20th day of February, 2007.

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18 Robert S. Lasnik
19 United States District Judge
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